

Notice of Allowability

Application No.

09/722,441

Examiner

Kathleen M Kerr

Applicant(s)

HANKE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/22/04.
2. ☒ The allowed claim(s) is/are 2-16, 18-29, 61, 62 and 64-86.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. On November 5, 2003, the Claims 2-16, 18-29, 61, 62, and 64-86 of this application were allowed. A petition to withdrawn from issue was received on November 22, 2004; said petition was granted in a paper mailed on December 2, 2004.

2. A request for continued examination under 37 C.F.R. § 1.114, including the fee set forth in 37 C.F.R. § 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 C.F.R. § 1.114, and the fee set forth in 37 C.F.R. § 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 C.F.R. § 1.114. Applicant's submission filed on November 22, 2004 has been entered.

3. The RCE included an amendment amending Claims 73-85. Thus, Claims 2-16, 18-29, 61, 62, and 64-86 are pending in the instant application and will be examined herein.

Correction of Inventorship

4. In view of the papers filed November 13, 2003 under 37 C.F.R. § 1.48(b), the inventorship in this nonprovisional application has been changed by the deletion of Inventors Crafton and Rayapati.

Priority

5. As previously noted, priority for the U.S. Provisional Application Nos. 60/173,707, filed on December 30, 1999, and 60/184,130, filed on February 22, 2000, is granted.

EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Craig Cochenour on January 27, 2005.

Amendments to the Claims

7. The claims been amended as follows:

a) Rewrite Claim 10 as follows:

---10. The method of claim 6, wherein said isolated polynucleotide molecules further comprises at least one nucleic acid molecule selected from the group consisting of:

- a) a nucleic acid molecule encoding the *asd* amino acid sequence of SEQ ID NO:4;
- b) a nucleic acid molecule encoding the *dapA* amino acid sequence of SEQ ID NO:6;
- c) a nucleic acid molecule encoding the *dapB* amino acid sequence of SEQ ID NO:8;
- d) a nucleic acid molecule encoding the *ddh* amino acid sequence of SEQ ID NO:10;
- e) a nucleic acid molecule encoding the *lysA* amino acid sequence of SEQ ID NO:21;
- f) a nucleic acid molecule encoding the *lysA* amino acid sequence of SEQ ID NO:14; and
- g) a nucleic acid molecule encoding the *ORF2* amino acid sequence of SEQ ID NO:16.---

b) Rewrite Claims 80-85 as follows:

---80. The method of claim 68, wherein said aspartate-semialdehyde dehydrogenase activity is produced by the *asd* polypeptide encoded by the polynucleotide of SEQ ID NO:3.

81. The method of claim 69, wherein said dihydrodipicolinate synthase activity is produced by the *dapA* polypeptide encoded by the polynucleotide of SEQ ID NO:5.

82. The method of claim 70, wherein said dihydrodipicolinate reductase activity is produced by the *dapB* polypeptide encoded by the polynucleotide of SEQ ID NO:7.

83. The method of claim 71, wherein said diaminopimelate dehydrogenase activity is produced by the *ddh* polypeptide encoded by the polynucleotide of SEQ ID NO:9.

84. The method of claim 72, wherein said diaminopimelate decarboxylase activity is produced by the *lysA* polypeptide encoded by the polynucleotide of SEQ ID NO:20.

85. The method of claim 72, wherein said diaminopimelate decarboxylase activity is produced by the *lysA* polypeptide encoded by the polynucleotide of SEQ ID NO:13.---

Conclusion

8. Claims 2-16, 18-29, 61, 62, and 64-86 are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
Art Unit 1652

January 27, 2005